

Court rules in favor of gas pipelines in FERC case

Last Update: 1:08 PM ET Nov 17, 2006

WASHINGTON (MarketWatch) -- A U.S. appeals court Friday ruled in favor of natural gas pipeline companies, finding that a 2004 Federal Energy Regulatory Commission natural gas rule "does not reflect the reasoned decision-making" required under the law.

Specifically, the U.S. Court of Appeals for the D.C. Circuit granted a petition submitted by pipeline companies and their Washington, D.C.-based industry trade group the Interstate Natural Gas Association of America. In doing so, the court directed FERC to rethink its standard of conduct rules.

The disputed regulations aim to restrict interstate gas pipeline companies and utility companies from giving their own affiliates unfair, preferential treatment over non-affiliated customers.

Under the leadership of former FERC Chairman Patrick Wood III, FERC made significant changes to the commission's standards of conduct.

The new rule was issued in late 2003 and finalized in late 2004.

It extended the rules so that they would also govern pipeline companies' relationship with several non-marketing affiliates that process, gather, or produce gas. Also, the new standards cover a pipeline's relationship with affiliates that don't hold capacity on a pipeline.

Pipeline companies like National Fuel Gas Supply Corp. (NFG) challenged the new rules.

Additionally, Joseph Kelliher, who was a member of the commission in 2004 and is now FERC's chairman, had voiced concerns with the expanded standards of conduct. He argued that the rule was "flawed" because there is a lack of evidence that justifies expanding the standards beyond marketing affiliates.

"Suspicion is not a sufficient basis," Kelliher wrote in an April 16 statement. Then-commissioner Nora Brownell also voiced concerns.

The court on Friday said Kelliher and Brownell were correct.

"FERC here has provided no evidence of a real problem with respect to pipelines' relationships with non-marketing affiliates," it said. "Order 2004 does not include a single example of abuse by non-marketing affiliates. Nor does the record disclose complaints from competitors of pipelines' non-marketing affiliates."

FERC's asserted factual premises behind the rule "do not withstand scrutiny," it said in its 24-page decision. "We therefore hold that the order is arbitrary and capricious as applied to natural gas pipelines."